

1 THE WITNESS: Judge, if you look at
2 this map, okay --

3 JUDGE SIPPEL: I gotcha.

4 THE WITNESS: -- we tried to
5 divide up -- when I was at Comcast SportsNet
6 Mid-Atlantic, like in 2002, we decided to do
7 targeted advertising or split-feed
8 advertising. We pretty much cut this region
9 in half and we'd have one commercial reel
10 service the Baltimore area north and we had
11 one commercial reel that serviced the
12 Washington DC area and south. Okay, the
13 reason is, we wanted to make it more
14 attractive in 2002 for advertisers who could
15 pick and choose what they wanted. If they had
16 a bigger menu, they were more likely to spend
17 with us.

18 So back in 2002 with Comcast, we
19 were able to go out and sell the Baltimore DMA
20 as one commercial reel, the Washington DMA as
21 another commercial reel or we could sell the
22 whole seven-state territory. There were

1 different price ports for each.

2 BY MR. FREDERICK:

3 Q And what happened when you came to
4 MASN and you asked Comcast about doing split-
5 feed advertising for MASN?

6 A They said no, no way, not in the
7 contract, you're not allowed to do it. And I
8 said, "That's not fair. You're treating
9 SportsNet way differently than you're treating
10 MASN. SportsNet has a huge advantage in the
11 marketplace", if they can sell three different
12 feeds and they were prohibiting MASN from
13 selling more than one feed.

14 Q How did that eventually get
15 resolved?

16 A We had to sue for our rights to
17 get the split-feed advertising.

18 Q Now, I'd like to ask you about
19 demand for MASN's programming. How would you
20 characterize MASN's demand in the unlaunched
21 areas that are in dispute in this litigation?

22 A MASN demand for programming is

1 strong throughout this whole territory. It's
2 stronger in some areas than others but it's
3 strong and the ratings can prove that it's
4 strong.

5 Q Now, how would -- what factors do
6 you attribute to that strength? What do you
7 look for to prove that strength?

8 A Well, first and foremost, if you
9 want to know about demand, then you look at
10 the other people who carry us. Okay, other
11 MVPDs carry us in these areas, Dish and Direct
12 and Verizon and Cox, all major cable
13 operators, carry us in these areas. That's
14 the first thing that I look at.

15 I look at ratings, I look at
16 ratings and I look at the history of the team
17 in that marketplace where over-the-air
18 stations, not cable stations. Two RSNs carry
19 the programing, many dozens of over-the-air
20 television stations carry the programming and
21 dozens of radio affiliates carry the
22 programming to those areas.

1 Q Do you have a general sense of
2 what ratings Orioles obtained prior to those
3 games migrating to MASN?

4 A In those areas?

5 Q Yes.

6 A In those areas, in Harrisburg in
7 July of '04 we did a [REDACTED] rating. That is a
8 huge number. And the reason I think it's
9 important is because July is the lowest month
10 of the year for ratings and it was before the
11 Nationals came into town. So Baltimore was
12 the only team you could see at that point. So
13 a [REDACTED] rating in Harrisburg is significant.

14 In Roanoke and Lynchburg, the [REDACTED]
15 rating, same time period, very significant.

16 Q Now, what is the history of
17 carriage of Orioles' games throughout the
18 disputed territories?

19 A Well, from what I can recall, the
20 Orioles have been carried in parts of this
21 area since the '80s. And I believe it was
22 Mike Ortman who sold -- Mike Ortman who works

1 for Comcast and used to work for HDS, sold
 2 Orioles baseball to all these areas. Orioles
 3 baseball is now aired on three regional sports
 4 networks, three different regional sports
 5 networks and many over-the-air stations,
 6 including Harrisburg, York, Roanoke,
 7 Lynchburg, and many others in this area.

8 Q And what is your understanding of
 9 Orioles historical carriage in the Tri-Cities
 10 area?

11 A Well, from the documents that --
 12 and this happened before I got there, in the
 13 early 2000s, before we got there we looked at
 14 documents and saw the Orioles were carried in
 15 Tri-Cities. I'm not sure that we can
 16 ascertain that it was carried at Tri-Cities
 17 right now, but as far as the documents that we
 18 have, it says they were carried in Tri-Cities.

19 Q Now, are any other professional
 20 baseball teams allowed to be telecast on
 21 regional sports programming in MASN's
 22 television territory?

1 A Yes, other teams are allowed to be
2 telecast in there.

3 Q Can you explain how you --

4 A Did you say baseball? I'm sorry?

5 Q Yes, baseball.

6 A Oh, I'm sorry, I didn't catch the
7 baseball. No, this is our exclusive territory
8 for Orioles and Nationals baseball, this whole
9 map here.

10 JUDGE SIPPEL: Now, this is MASN's
11 exclusive territory. Is that what you're
12 saying?

13 THE WITNESS: This is the territory
14 that Major League Baseball designates as
15 exclusive territory for the Orioles and
16 Nationals games to be aired.

17 BY MR. FREDERICK:

18 Q So if I'm a Yankees' fan for
19 instance, can I watch Yankees' games on a
20 regional sports network in Roanoke or
21 Lynchburg?

22 A Not on expanded basic TV, you

1 cannot. You'd have to purchase a very
2 expensive programming package to get those
3 games.

4 Q How do you see Comcast carriage
5 decision not to launch MASN in these three
6 territories as effecting demand for MASN?

7 A Well, if you don't carry in some
8 of these areas, it hurts us in a lot of ways.
9 It hurts us for ratings, it hurts us for
10 viewership, and advertisers walk away if
11 you're not carried in those areas. Some of
12 those areas, we can't even approach because
13 it's not worth our time and resources because
14 we don't have the significant carriage to ask
15 local advertisers to spend money with us.

16 Q And has MASN been effected by any
17 advertiser decision by Comcast decision not to
18 carry MASN in these effected areas?

19 A Yes, we have.

20 Q Can you explain to the Court how?

21 A The most prominent case would be
22 the Roanoke, Lynchburg area where MASN signed

1 up an advertiser, [REDACTED], and at that point --
 2 I believe at that point when we signed [REDACTED]
 3 up, we all believed that we were 100 percent
 4 distributor in this territory. We only found
 5 out later, through the car dealers in that
 6 area that we weren't carried there and because
 7 of that non-carriage in that area, we had a
 8 rebate a lot of money to [REDACTED] and we will
 9 not, in my opinion, get them back in that area
 10 as advertisers.

11 MR. KIRK: Objection, your Honor.
 12 He's going beyond the scope of this testimony.

13 JUDGE SIPPEL: Yeah, I'll strike
 14 the last.

15 BY MR. FREDERICK:

16 Q With respect to programming
 17 rights, Mr. Cuddihy, you explained earlier
 18 that you -- MASN competes. Can you describe
 19 the competition for programming rights?

20 A Sure. I compete -- I've competed
 21 with Comcast SportsNet for rights to the
 22 Ravens, to the Redskins, for Colonial Athletic

1 basketball, for the BB&T and for DC United.

2 Q What is your understanding of the
3 popularity of Atlantic Coast Conference
4 programming in the MASN television territory?

5 A ACC program is important, sure.

6 Q Did you have any experience with
7 CSNMA concerned ACC programming?

8 A In 2001, I negotiated a deal for
9 the ACC to be carried on Comcast SportsNet
10 Mid-Atlantic. It was a five-year deal, ending
11 in 2006. At that time, in 2006, I tried to
12 negotiate for that deal with the ACC to be on
13 MASN. However, at that point, we were not
14 carried by Comcast and that really hurt us in
15 our negotiations. We didn't even get a chance
16 to bid because of that.

17 Q What about something like the
18 Washington Redskins, how is Comcast non-
19 carriage effecting MASN's ability to obtain
20 Washington Redskins pre-season rights?

21 A The Redskins -- the Redskins gets
22 a little complicated.

1 THE WITNESS: Judge, I'm going to
2 refer to the map for second here. The
3 Redskins --

4 JUDGE SIPPEL: You're still on this
5 Exhibit 239, right?

6 THE WITNESS: Yeah. When you talk
7 about the Redskins --

8 JUDGE SIPPEL: Yes.

9 THE WITNESS: -- the Redskins'
10 footprint with territories are not the same as
11 MASN's. The Redskins' footprint is really
12 Washington DC, and south, okay. When I was
13 trying to negotiate for rights this year with
14 the Redskins, one of the things that I had to
15 bring up and did not make them happy is we do
16 not have carriage in Roanoke, Lynchburg and
17 Tri-Cities. That's Redskins territory, okay.
18 We were negotiating for the rights
19 to pre-season games and Redskins programming
20 throughout the year. Because those pockets
21 weren't penetrated and Comcast didn't carry
22 us, that hurt me a lot in my stance about why

1 the Redskins should leave Comcast SportsNet
2 Mid-Atlantic and come to MASN because I didn't
3 have those pockets covered. That would have
4 meant that nobody in those areas would have
5 seen the pre-season games and nobody would
6 have seen the Redskins programming throughout
7 the year and that was a big issue for the
8 Redskins.

9 BY MR. FREDERICK:

10 Q How do you see the carriage gaps
11 where Comcast has now launched MASN as helping
12 Comcast?

13 A Well, could you imagine if I was
14 going to negotiate --

15 JUDGE SIPPEL: Don't say "you can
16 imagine".

17 THE WITNESS: I'm sorry. If I'm
18 going to negotiate with somebody, whether it's
19 the Wizards or the Capitals or the Redskins in
20 the ACC, and I have to tell them that I'm not
21 in these areas and my competitor is, Comcast
22 SportsNet Mid-Atlantic, I'm going to be at a

1 severe disadvantage.

2 BY MR. FREDERICK:

3 Q Now, you just mentioned the
4 Wizards and the Capitals. Could you explain
5 to the Court what those teams are and what
6 MASN's interest might be in carrying that
7 programming when it becomes available?

8 A If that programming was available,
9 the Wizards and Capitals, we would definitely
10 seek to acquire that programming. They are
11 both -- have their rights held by Comcast
12 SportsNet Mid-Atlantic and have for some time,
13 but they would be a nice fit for our network.

14 JUDGE SIPPEL: You're talking about
15 in all these places in 239 or --

16 THE WITNESS: Yeah, CSN Mid-
17 Atlantic distributes the Wiz and Caps
18 basically till right about there.

19 JUDGE SIPPEL: Tell me what that is
20 for the record.

21 THE WITNESS: Oh, I'm sorry. For
22 the record, it's North Carolina.

1 JUDGE SIPPEL: So the yellow would
2 be out.

3 THE WITNESS: The yellow would be
4 out and most of the other area in this map
5 besides North Carolina. That's where they
6 distribute the Wizards and Capitals.

7 JUDGE SIPPEL: All right.

8 BY MR. FREDERICK:

9 Q Mr. Cuddihy, have you prepared
10 written testimony for this case?

11 A I have.

12 Q And is it true and correct?

13 A Yes, it is.

14 MR. FREDERICK: Your Honor, we've
15 marked that as MASN Exhibit 235 and we would
16 ask that it be admitted into evidence.

17 JUDGE SIPPEL: Any objection?

18 MR. TOLLIN: No objection.

19 JUDGE SIPPEL: 235 is identified
20 and received as 235. That's your -- did you
21 sign that testimony?

22 (The document referred to was

1 marked as MASN Exhibit Number 235
2 for identification and was
3 received in evidence.)

4 THE WITNESS: I believe I did, yes.

5 JUDGE SIPPEL: Do you want to give
6 it to the witness, too? The witness should
7 have it in front of him.

8 MR. FREDERICK: Your Honor, we pass
9 the witness.

10 JUDGE SIPPEL: Thank you. Does
11 everybody else have a copy of his testimony
12 now?

13 MR. TOLLIN: We do, your Honor.

14 JUDGE SIPPEL: You do, okay, I have
15 a copy. All right. All right, are you going
16 to tender him now or are you almost ready to
17 tender him?

18 MR. FREDERICK: No, we'll tender
19 him for cross examination, your Honor.

20 JUDGE SIPPEL: Okay, and that will
21 be --

22 MR. TOLLIN: Mr. Kirk.

1 MR. KIRK: That will be me, your
2 Honor.

3 JUDGE SIPPEL: Mr. Kirk, sir.

4 MR. KIRK: At this point, does it
5 make sense to start cross examination or does
6 it make sense to break for lunch?

7 JUDGE SIPPEL: Well, I think it
8 probably does make better sense to break for
9 lunch and then maybe you can switch seats up
10 here and get yourself up in the number one
11 seat. It would be easier.

12 MR. KIRK: That's fine.

13 JUDGE SIPPEL: Because I figure it
14 will be a fairly extended -- I mean, it's not
15 going to be short.

16 MR. KIRK: No.

17 JUDGE SIPPEL: All right, what time
18 is it? I get a glare on that clock. What
19 time does it say?

20 MR. FREDERICK: 12:18, your Honor.

21 JUDGE SIPPEL: `12:18? Be back at
22 quarter of 2:00.

1 (Whereupon, at 12:18 a.m. a
2 luncheon recess was taken.)

3 JUDGE SIPPEL: You may proceed.

4 CROSS-EXAMINATION BY COUNSEL FOR COMCAST

5 BY MR. KIRK:

6 Q Thank you. I'd like to turn you,
7 before I turn into my main cross questions, to
8 Madison Exhibit No. 239, the map that was
9 shown to you.

10 Can you identify for the record
11 where the Harrisburg DMA is on that map?

12 A Yes, I can.

13 Q Can you do that for me?

14 A It's right up here north of
15 Baltimore. That's it.

16 Q For the record it's that isolated
17 area at the top of the colored section?

18 A Yes, the shade of pink on the
19 north side where it says Harrisburg, that's
20 it.

21 Q Yes, thank you.

22 MR. KIRK: And did you say that

1 it is the pink and the red?

2 WITNESS: No, I believe the pink
3 is Harrisburg on this map, as far as I can
4 see.

5 BY MR. KIRK:

6 Q The DMA as a whole, does the DMA
7 as a whole include the pink and the red?

8 A I know that the DMA includes the
9 pink. I believe it does include some of the
10 red, but I can't be certain.

11 Q Okay. Why would it include the
12 colors pink and red.

13 MR. FREDERICK: Objection;
14 foundation, Your Honor.

15 JUDGE SIPPEL: Well, I think you
16 will have to take it assuming that it does.
17 We haven't established it yet for this
18 witness.

19 MR. KIRK: This witness indicated
20 he thought a part of the red was in
21 Harrisburg.

22 JUDGE SIPPEL: He did. He did.

1 But we don't have it established with a
2 certainty. How would you know that?

3 WITNESS: Well, here's what I
4 know. I will tell you what I know. The name
5 of the DMA is the Harrisburg-Lancaster-
6 Lebanon-and York DMA. As far as I know, all
7 of those cities are encompassed in one DMA.

8 BY MR. KIRK:

9 Q Okay, what region, for rate
10 purposes, is York, the city of York, on your
11 rate card?

12 A I believe the city of York is
13 number four.

14 Q Okay. You do not think it is the
15 red, that area that is trailing up above
16 Baltimore?

17 A Most of the word, York, is in the
18 pink. But I can't be certain that some of
19 York is in Region #3.

20 Q Okay. Let's focus back on that
21 map. The word, Baltimore, appears on the map,
22 correct?

1 A Yes.

2 Q There is a straight line right
3 above Baltimore. What do you think that
4 straight line indicates?

5 A I believe that is the state
6 boundary of Maryland.

7 Q Okay. What is north of the state
8 line of Maryland and that red area?

9 A The word, Lebanon.

10 Q For purposes of DMAs?

11 A Well, for purposes of DMAs, it's
12 definitely the Harrisburg-Lancaster-Lebanon-
13 York DMA. And I don't have the DMA map in
14 front of me. I really can't tell from this.
15 But it could include part of the Baltimore DMA
16 as well. I'm just not certain without that
17 map in front of me that distinguishes the
18 DMAs.

19 Q But north of that line you've
20 indicated is Pennsylvania?

21 A Yes.

22 Q And a portion of Pennsylvania

1 north of the state line, MASN is charging
2 Region #3 rates, correct?

3 A That's right.

4 Q And then north of Region #3, where
5 it juts up on the map here, where it says
6 Lancaster, there is a different rate charge.

7 A That's right.

8 Q Why would you charge two different
9 rates in those areas?

10 A Well, first, I didn't come up with
11 this map, okay. So I can't be definitive; I
12 can tell you this. There's strong interest in
13 MASN programming. In some areas it was
14 determined that the strengths were different.
15 So closer to Baltimore, according to the rate
16 charge, we would charge more because the
17 interest we felt was stronger in that area
18 than it might have been in the pink section.

19 Q So again, for that area north of
20 Baltimore, the two different colors reflect
21 two different levels of interest from MASN's
22 perspective; correct?

1 A It reflects two different pricing
2 points as far as I was given that information
3 by my predecessors.

4 Q And two different pricing points,
5 for what reason were there two different
6 pricing points? I thought you said it was
7 because of demand.

8 A Well, whoever put the pricing
9 together decided that the value proposition
10 for us and for our operators closer in to the
11 Baltimore region, the higher price we were
12 able to charge, and that the value to the
13 operators, they would see the value to the
14 operators and pay those rates.

15 Q If that area above Baltimore that
16 is pink and red were the Harrisburg-Lebanon-
17 Lancaster and York DMA, and there are two
18 different rates in that DMA, would it be
19 appropriate for a cable company to treat the
20 northern part of that DMA that is pink
21 differently from the lower part of the DMA
22 that is red?

1 A You'd have to ask the cable
2 company that. I don't know. We would charge
3 prices, and a lot of MVPs, they just take them
4 at the rates, and the rates are the same for
5 all the operators that we have.

6 Q You've testified that your current
7 responsibilities involve negotiating
8 affiliation agreements with other cable
9 companies; is that correct?

10 A I said for smaller operators, they
11 do, yes.

12 Q Do you think that a regional
13 sports network such as MASN should prepare a
14 list of systems within a cable company area's
15 before entering into carriage negotiations?

16 A I believe that what I do now,
17 since I took over affiliate relations in 2007,
18 when I'm dealing with the smaller operators,
19 I ask them what their territories area is, and
20 what their head ends are, and try to gauge
21 from them what their subscriber numbers are.

22 Q Do you prepare a list yourself

1 before you go into those negotiations?

2 A I take what information they give
3 me. Most of the people I'm dealing with, I'm
4 trying to think of cases where they've given
5 me less. We want to know where they are. We
6 ask them where they are. So when we ask them
7 about subscribers and head ends and feed
8 points, yes, they give us the information, and
9 we put it in the list.

10 Q My question wasn't what you ask
11 them for. When you, on behalf of MASN, want
12 to approach a cable company and negotiate a
13 carriage agreement do you prepare internally
14 a list to form the basis of your negotiations?

15 A Yes, we do.

16 Q Yes, we do.

17 JUDGE SIPPEL: What do you mean
18 by head ends and freed points?

19 WITNESS: Well, the cable system
20 might have many head ends. When we first
21 launch with Comcast --

22 JUDGE SIPPEL: What is a head

1 end?

2 WITNESS: Well, a head end is a
3 place where a cable company distributes the
4 network from a technical standpoint. They
5 have satellite dishes there. They have
6 decoders. They have receiver equipment. And
7 they take a lot of the programming feeds off
8 the big satellite in the sky, beam them down
9 to their head end, then the head end
10 distributes them to via terrestrial usually
11 microwave or fiber to the homes.

12 JUDGE SIPPEL: And then the feed
13 point is what?

14 WITNESS: Feed point, I use the
15 word, feed point, almost the same way.

16 JUDGE SIPPEL: Well, you said
17 head ends, feed points and subscribers were
18 the three categories.

19 WITNESS: Yes, I want to know
20 what head ends they have, okay. And then I
21 want to make sure that those head ends are
22 feeding the systems that they say they are.

1 It gets a bit confusing.

2 JUDGE SIPPEL: So the feed point
3 would be the systems that are going to receive
4 what the head ends are -- I don't know,
5 honestly. That's probably not it either. But
6 the head ends are receiving from a satellite.

7 WITNESS: Yes, signals from a
8 satellite.

9 JUDGE SIPPEL: Then the head ends
10 go to a feed point that is going to send it
11 some place; do I have that right?

12 WITNESS: I think you do, yes. I
13 can explain it a little bit more if you want.

14 JUDGE SIPPEL: Go ahead.

15 WITNESS: When Comcast first
16 agreed to launch MASN there were 60 head ends
17 that we had to send equipment to. Those 60
18 head ends we sent equipment to those 60 head
19 ends, and those head ends not only downloaded
20 our signal, once they downloaded, compressed
21 and changed our signal or whatever they needed
22 to do, then they send it out to everybody's